

ASSEMBLY BILL

No. 949

Introduced by Assembly Member Kehoe

February 23, 2001

An act to amend Sections 1601 and 1603 of the Fish and Game Code, relating to streambeds, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 949, as introduced, Kehoe. Natural waters.

(1) Under existing law, general plans for a project for construction by, or on behalf of, any state or local governmental agency or any public utility are required to be submitted to the Department of Fish and Game if the project will, among other things, divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake designated by the department in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit.

Existing law also makes it unlawful for any person to substantially change the bed, channel, or bank of any river, stream, or lake designated by the department without first notifying the department, except as provided.

This bill would add to those requirements any project by such an entity or person that would fill the bed, channel, or bank of any river, stream, or lake and would also include isolated wetlands, seasonal wetlands, vernal pools, or other waters that are not part of a tributary system to interstate water or to navigable water of the United States.

(2) Other provisions of existing law would make a violation of the bill a misdemeanor. Thus, this bill would impose a state-mandated local program by creating a new crime.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) Under existing law, the money in the Fish and Game Preservation Fund is continuously appropriated to the department to carry out the Fish and Game Code.

Because this bill would impose new duties on the department, the bill would thereby make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1601 of the Fish and Game Code is
2 amended to read:
3 1601. (a) Except as provided in this section, general plans
4 sufficient to indicate the nature of a project for construction by, or
5 on behalf of, any state or local governmental agency or any public
6 utility shall be submitted to the department if the project will (1)
7 divert, obstruct, *fill*, or change the natural flow or the bed, channel,
8 or bank of any river, stream, ~~or~~ lake, *isolated wetland, seasonal*
9 *wetland, vernal pool, or other water that is not part of a tributary*
10 *system to interstate water or to navigable water of the United*
11 *States* designated by the department in which there is at any time
12 an existing fish or wildlife resource or from which these resources
13 derive benefit, (2) use material from the streambeds designated by
14 the department, or (3) result in the disposal or deposition of debris,
15 waste, or other material containing crumbled, flaked, or ground
16 pavement where it can pass into any river, stream, or lake
17 designated by the department. If an existing fish or wildlife
18 resource may be substantially adversely affected by that
19 construction, the department shall notify the governmental agency
20 or public utility of the existence of the fish or wildlife resource
21 together with a description thereof and shall propose reasonable
22 modifications in the proposed construction that will allow for the
23 protection and continuance of the fish or wildlife resource,
24 including procedures to review the operation of those protective



1 measures. The department's description of an existing fish or
2 wildlife resource shall be specific and detailed and the department
3 shall make available upon request the information upon which its
4 conclusion is based that the resource may be substantially
5 adversely affected. The proposals shall be submitted within 30
6 days from the date of receipt of the plans, except that the time
7 period may be extended by mutual agreement. Upon a
8 determination by the department and after notice to the affected
9 parties of the necessity for an onsite investigation or upon the
10 request for an onsite investigation by the affected parties, the
11 department shall make an onsite investigation of the proposed
12 construction and shall make the investigation before it proposes
13 any modifications.

14 (b) (1) Within 14 days from the date of receipt of the
15 department's proposals, the affected agency or public utility shall
16 notify the department in writing whether the proposals are
17 acceptable, except that the time period may be extended by mutual
18 agreement. If the department's proposals are not acceptable to the
19 affected agency or public utility, the agency or public utility shall
20 so notify the department. Upon request, the department shall meet
21 with the affected agency or public utility within seven days of
22 receipt of the notification, or at a time mutually agreed upon, for
23 the purpose of developing proposals that are acceptable to the
24 department and the affected agency or public utility.

25 (2) If mutual agreement is not reached at the meeting held
26 pursuant to paragraph (1), a panel of arbitrators shall be
27 established. The panel of arbitrators shall be established within
28 seven days from the date of the meeting, or at a time mutually
29 agreed upon, and shall be composed of one representative of the
30 department, one representative of the affected agency or public
31 utility, and a third person mutually agreed upon or, if no agreement
32 can be reached, the third person shall be appointed in the manner
33 provided by Section 1281.6 of the Code of Civil Procedure. The
34 third person shall act as chair of the panel. The panel may settle
35 disagreements and make binding decisions regarding the fish and
36 wildlife modifications. The arbitration shall be completed within
37 14 days from the date that the composition of the panel is
38 established, unless the time is extended by mutual agreement. The
39 expenses of the department representative shall be paid by the
40 department; the expenses of the representative of the

1 governmental agency or the public utility shall be paid by the
2 governmental agency or the public utility; and the expenses of the
3 chair of the panel shall be paid one-half by each party.

4 (c) A governmental agency or public utility proposing a project
5 subject to this section shall not commence operations on that
6 project until the department has found that the project will not
7 substantially adversely affect an existing fish or wildlife resource
8 or until the department's proposals, or the decisions of a panel of
9 arbitrators, have been incorporated into the project. The
10 department shall not condition the streambed alteration agreement
11 on a project subject to this section on the receipt of another state
12 or federal permit.

13 (d) The department shall determine and specify types of work,
14 methods of performance, or remedial measures that are exempt
15 from this section.

16 (e) With regard to any project that involves the routine
17 maintenance and operation of water supply, drainage, flood
18 control, or waste treatment and disposal facilities, notice to, and
19 agreement with, the department is not required subsequent to the
20 initial notification and agreement, unless the work as described in
21 the agreement is substantially changed or conditions affecting fish
22 and wildlife resources substantially change, and the resources are
23 adversely affected by the activity conducted under the agreement.
24 This subdivision applies in any instance where notice to, and
25 agreement with, the department has been attained prior to January
26 1, 1977.

27 (f) (1) Except as provided in paragraph (2), this section does
28 not apply to any of the following projects:

29 (A) Immediate emergency work necessary to protect life or
30 property.

31 (B) Immediate emergency repairs to public service facilities
32 necessary to maintain service as a result of a disaster in a
33 disaster-stricken area in which a state of emergency has been
34 proclaimed by the Governor pursuant to Chapter 7 (commencing
35 with Section 8550) of Division 1 of Title 2 of the Government
36 Code.

37 (C) Emergency projects undertaken, carried out, or approved
38 by a public agency to maintain, repair, or restore an existing
39 highway, as defined in Section 360 of the Vehicle Code, except for
40 a highway designated as an official state scenic highway pursuant

to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. Work needed in the vicinity above and below a highway may be conducted outside of the existing right-of-way if it is needed to stop ongoing or recurring mudslides, landslides, or erosion that pose an immediate threat to the highway or to restore those roadways damaged by mudslides, landslides, or erosion to their predamage condition and functionality. This subparagraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(2) The agency or public utility performing the project shall notify the department within 14 days from the date of commencement of a project exempted by this subdivision.

(3) For purposes of this subdivision, “emergency” means an emergency, as defined in Section 21060.3 of the Public Resources Code.

(g) The department may enter into agreements with applicants for a term of not more than five years for the performance of operations on projects subject to this section. The terms of the agreement may be renegotiated at any time by mutual consent of the parties. Each agreement shall be renewed automatically by the department at the expiration of its term unless the department determines that there has been a substantial change in conditions. If there is a disagreement between the department and the applicant as to whether there has been a substantial change in conditions, the department and the applicant shall proceed to arbitration pursuant to subdivision (b). The department may charge a fee when the agreement is entered into and for each renewal, but may not charge an annual fee for this purpose.

SEC. 2. Section 1603 of the Fish and Game Code is amended to read:

1603. (a) It is unlawful for any person to substantially divert or obstruct the natural flow or substantially change *or fill* the bed, channel, or bank of any river, stream, ~~or~~ lake, *isolated wetland, seasonal wetland, vernal pool, or other water that is not part of a tributary system to interstate water or to navigable water of the*

1 *United States* designated by the department, or use any material
2 from the streambeds, without first notifying the department of that
3 activity, except when the department has been notified pursuant to
4 Section 1601. The department, within 30 days from the date of
5 receipt of that notice, or within the time determined by mutual
6 written agreement, shall, when an existing fish or wildlife resource
7 may be substantially adversely affected by that activity, notify the
8 person of the existence of that fish or wildlife resource together
9 with a description of the fish or wildlife, and shall submit to the
10 person its proposals as to measures necessary to protect fish and
11 wildlife. Upon a determination by the department of the necessity
12 for onsite investigation or upon the request for an onsite
13 investigation by the affected parties, the department shall notify
14 the affected parties that it shall make an onsite investigation of the
15 activity and shall make that investigation before it proposes any
16 measure necessary to protect the fish and wildlife. The
17 department's description of an existing fish or wildlife resource
18 shall be specific and detailed and the department shall make
19 available upon request the information upon which its conclusion
20 is based that the resource may be substantially adversely affected.

21 (b) (1) Within 14 days from the date of receipt of the
22 department's proposals, the affected person shall notify the
23 department in writing whether the proposals are acceptable, except
24 that the time period may be extended by mutual agreement. If the
25 department's proposals are not acceptable to the affected person,
26 the person shall so notify the department. Upon request, the
27 department shall meet with the affected person within seven days
28 from the date of receipt of that notification or by a date that may
29 be mutually agreed upon for the purpose of developing proposals
30 that are acceptable to the department and the affected person.

31 (2) If mutual agreement is not reached at the meeting held
32 pursuant to paragraph (1), a panel of arbitrators shall be
33 established. However, appointment of the panel may be deferred
34 by mutual consent of the parties. The panel shall be established
35 within seven days from the date of that meeting and shall be
36 composed of one representative of the department, one
37 representative of the affected person, and a third person mutually
38 agreed upon or, if no agreement can be reached, the third person
39 shall be appointed in the manner provided by Section 1281.6 of the
40 Code of Civil Procedure. The third person shall act as panel chair.

1 The panel may settle disagreements and make binding decisions
2 regarding fish and wildlife modifications. The arbitration shall be
3 completed within 14 days from the date that the composition of the
4 panel is established, unless the time period is extended by mutual
5 agreement. The expenses of the department representative shall be
6 borne by the department; the expenses of the representative of the
7 person who diverts or obstructs the natural flow, or changes the
8 bed, of any river, stream, or lake, or uses any material from the
9 streambeds shall be borne by that person; and the expenses of the
10 chair of the panel shall be paid one-half by each party.

11 (c) It is unlawful for any person to commence any activity
12 affected by this section until the department has found that it will
13 not substantially adversely affect an existing fish or wildlife
14 resource or until the department's proposals, or the decisions of a
15 panel of arbitrators, have been incorporated into the activity. If the
16 department fails to act within 30 days from the date of the receipt
17 of the notice, the person may commence the activity. The
18 department shall not condition the streambed alteration agreement
19 on the receipt of another state or federal permit.

20 (d) It is unlawful for any person to engage in an activity
21 affected by this section, unless the activity is conducted in
22 accordance with the department's proposals or the decisions of the
23 panel of arbitrators.

24 (e) If an activity involves the routine maintenance and
25 operation of water supply, drainage, flood control, or waste
26 treatment and disposal facilities, notice to and agreement with the
27 department shall not be required subsequent to the initial
28 notification and agreement unless the work as described in the
29 agreement is substantially changed or conditions affecting fish and
30 wildlife resources substantially change and those resources are
31 adversely affected by the activity conducted under the agreement.
32 This subdivision applies in any instance where notice to, and
33 agreement with, the department has been attained prior to January
34 1, 1977.

35 (f) (1) Except as provided in paragraph (2), this section does
36 not apply to any of the following projects:

37 (A) Immediate emergency work necessary to protect life or
38 property.

39 (B) Immediate emergency repairs to public service facilities
40 necessary to maintain service as a result of a disaster in a

1 disaster-stricken area in which a state of emergency has been
2 proclaimed by the Governor pursuant to Chapter 7 (commencing
3 with Section 8550) of Division 1 of Title 2 of the Government
4 Code.

5 (C) Emergency projects undertaken, carried out, or approved
6 by a public agency to maintain, repair, or restore an existing
7 highway, as defined in Section 360 of the Vehicle Code, except for
8 a highway designated as an official state scenic highway pursuant
9 to Section 262 of the Streets and Highways Code, within the
10 existing right-of-way of the highway, damaged as a result of fire,
11 flood, storm, earthquake, land subsidence, gradual earth
12 movement, or landslide, within one year of the damage. Work
13 needed in the vicinity above and below a highway may be
14 conducted outside of the existing right-of-way if it is needed to
15 stop ongoing or recurring mudslides, landslides, or erosion that
16 pose an immediate threat to the highway or to restore those
17 roadways damaged by mudslides, landslides, or erosion to their
18 predamage condition and functionality. This subparagraph does
19 not exempt from this section any project undertaken, carried out,
20 or approved by a public agency to expand or widen a highway
21 damaged by fire, flood, storm, earthquake, land subsidence,
22 gradual earth movement, or landslide.

23 (2) The person performing the project shall notify the
24 department within 14 days from the date of commencement of a
25 project exempted by this subdivision.

26 (3) For purposes of this subdivision, “emergency” means an
27 emergency, as defined in Section 21060.3 of the Public Resources
28 Code.

29 (g) The department may enter into agreements with applicants
30 for a term of not more than five years for the performance of
31 activities subject to this section. The terms of the agreement may
32 be renegotiated at any time by mutual consent of the parties. Each
33 agreement shall be renewed automatically by the department at the
34 expiration of its term unless the department determines that there
35 has been a substantial change in conditions. If there is a
36 disagreement between the department and the applicant as to
37 whether there has been a substantial change in conditions, the
38 department and the applicant shall proceed to arbitration pursuant
39 to subdivision (b). The department may charge a fee when the

1 agreement is entered into and for each renewal, but may not charge
2 an annual fee for this purpose.

3 SEC. 3. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the penalty
8 for a crime or infraction, within the meaning of Section 17556 of
9 the Government Code, or changes the definition of a crime within
10 the meaning of Section 6 of Article XIII B of the California
11 Constitution.

